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LANCE S. WILSON
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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF NEVADA
11

12 Thomas A. Dillon, Independent Fiduciary
13 of Employers Mutual Plans,

CV-N-03-0119-HDM-VPC

14 Plaintiff,

PRELIMINARY REPORT

15 vs.

16 James Lee Graf, et al,

17 Defendants.
18 _____/

19 I.

20 **STATEMENT OF PRELIMINARY UNDERSTANDING OF FACTS**

21 This preliminary statement of understanding of facts is submitted on behalf of those
22 defendants currently represented by the Law Office of Mason & Thomas. It is not intended
23 to be an exhaustive recitation nor does it list those facts which may be unique to any one
24 defendant. Rather it is intended to present an overview of counsel's understanding of
25 those facts that are relatively undisputed.

26 Beginning in early 2001, insurance agencies heard from various reliable sources
27 that there was a company, Employers Mutual, LLC., offering health insurance plans to
28 employers at competitive premium rates. The agencies were told that the plans were

1 insured by a highly regarded insurance company. There was a third party administrator
2 located in Nevada called Sierra Administrators. The premiums were reasonably
3 competitive because the insurer could, unlike for example Blue Cross/Blue Shield,
4 underwrite the risks and was not required to accept all applicants.

5 Application forms were sent to the agencies along with premium rating programs
6 and the terms and conditions of the health insurance coverage; there was nothing on the
7 face of these documents to suggest Employer's Mutual was anything other than a
8 professional and legitimate company. Prior to returning applications on behalf of clients,
9 the agencies completed investigation into the viability of the plan being offered by
10 Employer's Mutual, LLC and determined to their satisfaction that this was an appropriate
11 plan to be offering to their clients. Many even contacted their respective state's department
12 of insurance and were not given any reason to suspect Employer's Mutual.

13 The insurance agencies then proceeded to offer the plan to clients. The
14 applications were completed and coverage placed with Employer's Mutual. The clients
15 paid monthly premiums for the coverage on behalf of their employees.

16 The agencies did not become aware of any concerns from clients until mid-2001
17 when some clients reported delays in receiving identification cards, delays in payments to
18 health care providers, and health care providers denying they had agreed to participate in
19 an Employer's Mutual network of providers. The agencies called the wholesale brokers
20 and/or the third party administrator to try to resolve the problems. They were assured that
21 the problems were temporary and the result of administrative glitches. Some agencies
22 participated in a conference call with representatives from Employer's Mutual and were
23 again assured that all was well.

24 As the summer months progressed the number of complaints increased. Many of
25 the insurance agencies asked for specific documentation of insurance from Employer's
26 Mutual and began to perform additional investigation. Various state departments of
27 insurance started their own investigations into Employer's Mutual.

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1 Ultimately several departments of insurance issued cease and desist orders. Long
2 before receiving those orders, most of the agencies has stopped offering Employer's
3 Mutual's plans to clients and had written to those who had signed up for the plans strongly
4 suggesting they cancel the existing Employer's Mutual plan and look elsewhere for health
5 insurance coverage.

6 These defendants are informed that Employer's Mutual was never able to contract
7 with an insurance company for payment of medical expenses. These defendants are
8 informed that a substantial amount of medical expenses incurred by participants in the plan
9 were not paid.

10 II.

11 PRELIMINARY STATEMENT OF CRITICAL FACTUAL ISSUES

12 The primary factual issue as to these defendants is whether they performed an
13 adequate investigation into the viability of Employer's Mutual and its health insurance plan
14 before offering it to clients. Plaintiff's complaint alleges that there were a number of "red
15 flags" present at the time of offering that should have alerted the defendants to "alert a
16 competent insurance producer to the fact that he or she was being had at the expense of
17 the clients."

18 With regard to the amounts of unpaid bills being claimed as damages, a
19 determination will have to be made in each instance as to how much of the bill would have
20 been paid by the plan and how much would have been paid by the patient/member.

21 III.

22 PRELIMINARY STATEMENT OF LEGAL ISSUES

23 (1) Whether Dillon has standing to prosecute this action against individual insurance
24 agents and brokers.

25 (2) Whether the federal court has jurisdiction over the claims against the insurance
26 agents and brokers.

27 (3) Whether the claims against the individual insurance agents and brokers are
28 preempted by ERISA.

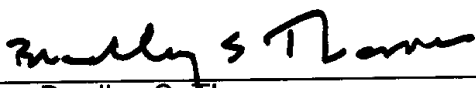
1 (4) Whether the employees whose medical expenses were not paid have a claim
2 for breach of contract against insurance agents and brokers with whom the employees had
3 no privity of contract.

4 (5) Whether the insurance agents and brokers owed a legally recognized duty to
5 employees whose claims were not paid.

6 (6) Whether all or some of the claims made by plaintiff are barred by the statute of
7 limitations applicable to any such claim.

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9 DATED: July 31, 2003.

10 MASON & THOMAS

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